

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PAUL K.,

Claimant,

v.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. L 2006120056

A Proceeding Under the Lanterman
Developmental Disabilities Services Act

DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, in Torrance on May 22, 2007. Harbor Regional Center was represented by Steven Roberts, Manager of Rights Assurance. Claimant and his mother were present and represented by Si Yon Rhee, Ph.D., of Protection & Advocacy, Inc. The mother was provided services of a Korean interpreter.

The regional center presented the testimony of Melissa Tiffany Ly, counselor, and Exhibits A – J. Claimant presented the testimony of the mother and Exhibits 1 – 8. All exhibits were admitted into evidence.

Oral and documentary evidence having been received, the Administrative Law Judge submitted this matter for decision on May 22, 2007, and finds as follows:

ISSUE

The issue presented for decision is whether the regional center should provide claimant with funding for family member respite so that claimant's mother and caregiver may rest and recover from her stress-related health conditions.

FACTUAL FINDINGS

1. Claimant Paul K. was born on August 28, 1977, and is 29 years old. He lives with his parents and sister in the family home in Torrance. Claimant was born in Korea and immigrated to this country with his family when he was approximately 11 years old. The primary language spoken at home is Korean but claimant understands both English and Korean. Claimant has been diagnosed with autism, moderate mental retardation, and seizure disorder.

2. (A) Based on his developmental delays and disabilities, claimant has been a client of and receiving services from the Harbor Regional Center (hereinafter regional center or Service Agency). From the regional center, claimant currently receives 24 hours each month in respite care and attends the day program at the SVS Inclusion Center in Torrance five days weekly. The regional provides transportation to the day program. In addition, he receives 283 hours each month in In-Home Support Services (IHSS) from the Los Angeles County Department of Social Services.

(B) Claimant's mother is the primary caregiver for her son. She has elected to be recipient of the IHSS assistance. The family uses the 24 hours of monthly respite by paying claimant's sister to care for and supervise him. The parents prefer not to hire a caregiver or to use the services of the authorized respite care agency.

3. Six years ago, in May 2001, claimant underwent a psychological evaluation at the autism clinic at the UCLA Neuropsychiatric Hospital. At that time, claimant did not vocalize or engage in any voluntary or functional activity or skill. His mother worked with him on a daily basis by bathing, dressing, and feeding him. She also engaged her son in a structured teaching program. After high school, claimant began experiencing seizures and his daily living skills regressed after starting job training. During the evaluation, claimant was inattentive, unresponsive, and withdrawn. He had a flat affect and did not speak. The evaluators noted that claimant exhibited significant regression in his self-help or functional adaptive skills.

4. (A) On April and May 2006, claimant was evaluated by a clinical psychologist on request of the regional center. The psychologist noted that, for the past three years, claimant had been provided an educational and enrichment program at home. His mother hired teachers for music therapy and daily living skills. Claimant was taking medications for seizures.

(B) At the time of that psychological evaluation, claimant continued to have deficits in communication, daily living skills, and socialization. He did not dress or undress or brush his teeth independently. He used utensils and the bathroom when prompted but continued to have toileting accidents. His mother noted that her son was able to perform certain skills before he suffered seizures. Claimant did not

occupy himself with any activities. The clinical psychologist found that claimant was extremely dependent on prompts and would not complete any activity, including feeding and toileting, without first being prompted. The clinician opined that claimant had experienced a decline in language and daily living skills and became more dependent upon prompts after he began having seizures. Claimant's mother wanted her son to continue with the home program that she had organized for him.

5. (A) As established by his two recent Individual Family Service Plans from 2005 and 2006 and evidence from the hearing, claimant continues to be very dependent on others to prompt him to initiate and to complete tasks. At home, claimant can complete some self care tasks, such as washing or brushing his teeth, if prompted to start the task and to perform each step of the task. He is dependent on prompts throughout the day. His mother takes him to the bathroom every two or three hours to prevent toileting accidents. He has limited communication skills.

(B) Claimant's parents report that their son becomes anxious around strangers. They prefer that claimant receive one-to-one attention or instruction at home provided by a family member or person familiar to him. For about three years beginning in or about late 2002, claimant received individual instruction at home in social skills, music, sensory motor and perceptual skills, and language pursuant to a fair hearing decision. The Korean-speaking instructors were referred by friends or church members and hired by the mother to be her son's teachers.

(C) In February 2006, claimant started attending the day program at the All People Access Community services center in Garden Grove once each week. He began participating in the program with assistance of a one-to-one aide. On the other four days of the week, claimant continued to receive individual instruction at home. In October 2006, claimant began attending the SVS day program in Torrance on a weekly basis. Claimant is reportedly doing well at the SVS day program. His skills have improved and he is not as dependent on prompts to perform tasks. He enjoys the activities and singing there.

(D) With respect to social and recreational activities, claimant does not show any interest in interacting with others. His mother reports that her son enjoys weekend social programs with his family and church. The family is very involved with their church activities. On Saturdays, he attends a program for disabled persons at a Presbyterian church. On Sundays, he attends Sunday school at the family's church where he participates in worship, art, music, and physical education activities. The family pays for the weekend activities for claimant.

6. (A) At either the IFSP meeting in September 2005 or the addendum IFSP meeting in March 2006, the mother reported that she was in the hospital for eight days in 2005 due to stress and fatigue from caring for claimant. She said it was exhausting supervising her son and that she was hoping he would succeed in a day program so that she could rest during the day.

(B) At the IFSP meeting on September 12, 2006, claimant's mother requested that the regional center provide 21 days of in-home respite because she was stressed from caring for her son. The mother reported that her health was poor due to exhaustion. She stated she was having headaches, upset stomach, and nausea due to stress.

7. (A) In early November 2006, the counselor at the regional center received an e-mail from claimant's father who stated that his wife had a magnetic resonance imaging (MRI) screening at Harbor UCLA Medical Center and was to be hospitalized. He indicated that doctors had recommended a three-week rest or recuperation period for her. Claimant's father requested three weeks or 21 days of family member respite to assist the family.

(B) On November 8, 2006, the Service Agency denied claimant's request for 21 days of in-home family member respite during the mother's hospitalization. The regional center found that claimant was receiving 283 hours of IHSS and 24 hours of family member respite each month. In addition, claimant was attending a day program for up to five hours per day. The regional center determined that these existing resources or services were sufficient to assist the family while the mother was in the hospital.

(C) On November 29, 2006, claimant's mother filed an appeal, disagreeing with the decision of the Service Agency. In her Fair Hearing Request, she indicated she requested 21 days of family member respite for health reasons. The mother wrote that she had been suffering from serious migraine headaches which required her to seek emergency care and to see doctors. The mother indicated that doctors had advised her to take time off from caring for her son in order to improve her condition.

(D) On March 20, 2007, the Service Agency countered that its respite service policy would provide for out-of-home respite in a licensed residential facility for 21 days in cases of temporary disability of the parent or other short-term crisis. Claimant's mother disagreed with any temporary placement of her son in a residential facility, citing that he regressed and lost skills when he went to a day program outside of the home on a prior occasion.

8. At the commencement of the fair hearing, claimant's mother clarified her request for additional family member respite. The mother is requesting that the regional center provide six hours daily of family member respite for 21 days, or 126 hours of family member respite. The reason for the request is that the mother is suffering from migraine headaches and gastrointestinal problems due to stress and exhaustion from caring for her son and requires a three-week hiatus from her caregiver duties in order to rest and recuperate. She is hoping to return to Korea for the three weeks. During her absence, she would hire claimant's aunt to care for her son.

9. (A) In a letter dated May 16, 2007, Dr. Phillip C. Ahn, a neurologist and a clinical professor at the USC Keck School of Medicine, wrote that claimant is his patient and has a history of seizure disorder and autism. Dr. Ahn has observed that his patient is not comfortable in unfamiliar surroundings and has shown signs of severe regression in his behavior, communication, and self-help skills when placed in an uncomfortable environment, such as when he began a job training program after high school. Dr. Ahn indicates claimant is very dependent on prompts and instructions for all of his daily living activities, including eating, dressing, and personal hygiene. The neurologist opines that it would not be in claimant's best interest to stay in a group home in the event that his mother is absent as his caregiver, for claimant may suffer symptoms similar to post-traumatic stress disorder and regression in his independent living skills and social behaviors.

(B) Dr. Ahn also noted that he was aware claimant's mother has been experiencing serious health problems that require rest and has been hospitalized twice in 2006 due to her health problems. He notes that the mother has been instructed by her physician to take a temporary leave of absence as her son's caregiver.

10. (A) It was not established that a physician has recommended that claimant's mother be hospitalized or that she has been actually hospitalized for any length of time for migraine headaches, stress, or any other medical condition.

(B) In the past year or so, the mother has been treated at hospital emergency rooms for migraine headaches and stress on three occasions. She has had a MRI and has been prescribed medications. For her migraine headaches, the mother takes Elavil every night and takes Ibuprofen or Motrin as needed. When she has a severe migraine headache, she takes Imitrex as needed. She has severe migraine headaches approximately twice a month. When she has severe migraine headaches, the mother is unable to eat or to drink. For gastrointestinal problems related to stress, claimant's mother has been prescribed a laxative for constipation and Prevacid for a gastric condition. She fears that she will not be able to care for her son if her health declines.

(C) On October 3, 2006, the mother saw Dr. Danny Benmoshe at the clinic at Harbor-UCLA Medical Center. Dr. Benmoshe recommended that she have a two-month hiatus from her duties caring for her son in order to help her medical condition. Dr. Benmoshe did not indicate what was the mother's medical condition or diagnosis.

(D) On December 5, 2006, claimant's mother saw another physician at the clinic at Harbor-UCLA Medical Center. The physician wrote that the mother needed a four-month hiatus from her duties as her son's caregiver "secondary to her medical conditions." The physician did not state a diagnosis or medical condition for the mother.

(E) Claimant's mother has a follow-up visit for her headaches or neurological condition at the Harbor-UCLA Medical Center scheduled for September 4, 2007.

11. Five years ago, in April 2002, the Service Agency provided claimant with family member respite to allow his mother to travel to Korea for a family emergency or crisis. At that time, claimant's grandfather was ill and his mother was required to travel to Korea to see him.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

Grounds do not exist under the Lanterman Developmental Disabilities Services Act to grant claimant's request for additional family member respite to allow the mother to rest and recuperate by traveling to her home country of Korea for three weeks.

Under the Lanterman Developmental Disabilities Services Act (Lanterman Act), the Legislature has decreed that persons with developmental disabilities have a right to treatment and rehabilitative services and supports in the least restrictive environment and provided in the natural community settings as well as the right to choose their own program planning and implementation. (Welf. & Inst. Code, § 4502.)

The Legislature has further declared regional centers are to provide or secure family supports that, in part, respect and support the decision making authority of the family, are flexible and creative in meeting the unique and individual needs of the families as they evolve over time, and build on family strengths and natural supports. (Welf. & Inst. Code, § 4685, subd. (b).) Services by regional centers must be provided in the most cost-effective and beneficial manner. (Welf. & Inst. Code, §§ 4685, subd. (c)(3), and 4848, subd. (a)(11)) and must be individually tailored to the consumer (Welf. & Inst. Code, § 4648, subd. (a)(2)).

Further, Welfare and Institutions Code section 4648, subdivision (a)(8), provides that the regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving funds to provide those services. Section 4659, subdivision (a)(1), directs

regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services.

Generally, respite care is designed to assist family members in maintaining the client at home, provide appropriate care and supervision to ensure the client's safety in the absence of family members, relieve family members from the constantly demanding responsibility of caring for the client, and attend to the client's basic self-help needs and other activities of daily living. (Welf. & Inst. Code, § 4690.2, subd. (a)(1)-(4).)

Harbor Regional Center's Service Policy No. 12 (June 13, 2002) for respite care further provides that the Service Agency recognizes that, at times, all families have the need for respite or the intermittent relief from the stress of raising a child with developmental disabilities. In most instances, families are able to provide their own respite through such traditional sources as family members, friends, paid sitters or caregivers, or community programs. The Service Agency realizes that families may not be able to meet all or part of their respite needs because the primary caregiver may not possess the requisite physical or emotional stamina to provide for all of the care and supervision needs of the child with developmental disabilities or the family may have a temporary crisis or emergency and a natural support system is unavailable.

Under its Service Policy, Harbor Regional Center may purchase respite care for families under limited circumstances, including the applicable following instances: there are few or no natural or generic supports available to provide necessary supervision when the parent is away; the parent is temporarily unable to provide for all of the care and supervision needs of the client due to a physical or mental disability; or the family is experiencing a short-term crisis or emergency situation.

In these circumstances, the regional center may purchase respite care in accordance with these rules:

- (a) in-home respite for up to a maximum of 24 hours per month;
- (b) out-of-home respite in a licensed residential home for up to one day per month;
- (c) participation in a social or recreational program for up to 24 hours per month;
- (d) in the case of a temporary disability of the parent or other short-term crisis, out-of-home respite in a licensed residential home for up to 21 days; or

- (e) participation in a camping experience for up to three weeks.

The Service Policy observes that IHSS hours provided by the county may also allow the parent to purchase personal care assistance for the client while giving relief to the primary caregiver. Harbor Regional Center's publication entitled "Let's Talk About Respite—A Guide to In-Home Respite Services" discusses that families may likely receive between four and 24 hours per month of respite services but a family may receive more than 24 hours of respite care in unusual circumstances.

In the present appeal, claimant has argued that the family should receive an additional 126 hours of family member respite because the mother, who is the primary caregiver, is suffering from stress and needs a three-week hiatus or rest from her caregiving duties in order to recover and then to continue caring for her son. Unfortunately, the preponderance of the evidence did not demonstrate that the mother is temporarily disabled or that the family is having a crisis or emergency such that the family needs additional family member respite in order to provide appropriate care and supervision to claimant or to ensure his safety under the Lanterman Act.

It is not controverted that claimant's mother is suffering from stress as evidenced by her migraine headaches and gastrointestinal problems. She has made visits to the emergency room, seen physicians, and been prescribed medications for her conditions. On the other hand, the mother has not been hospitalized for stress. No physician has stated that she is disabled and unable to care for and supervise her son or prescribed hospitalization for her stress-related conditions. Rather, her physicians have simply recommended that she take a hiatus from her caregiving duties so she may fully regain her health. The mother has decided that she wants to take such hiatus by traveling to Korea. Unlike five years ago when claimant's grandfather was ill and the mother was required to travel to Korea, the evidence did not show that the mother's health concerns constitute an emergency or family crisis necessitating her travel abroad.

Here, claimant's mother is naturally stressed and tired from years of personally caring for her 29 year old and providing programs for him in the family home. She has elected to be her son's primary caregiver and recipient of the IHSS assistance. And, understandably, the parents do not want to place their son in a licensed residential facility to receive additional respite. Claimant is not comfortable around strangers and the parents fear that his daily living and other skills would erode if he were to stay in a facility. Nevertheless, claimant did not establish that additional respite is needed to maintain him at home, to provide safe and appropriate care and supervision for him in the absence of family members, or to attend to his needs and other activities. There appears to be no reason why claimant's parents cannot use his IHSS hours and monthly allotment of respite hours to temporarily hire caregivers or relatives to care and supervise claimant at home and to take him to his programs for a short time and thereby provide his mother with a needed break from

her strenuous caregiving and supervising tasks. During such hiatus, the mother may travel to Korea as she wishes in order to rest and recuperate.

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Wherefore, the Administrative Law Judge makes the following Order:

ORDER

The appeal of claimant Paul K. from the determination of the Harbor Regional Center is denied. The decision of the Harbor Regional Center to deny additional family member respite to claimant will be sustained.

Dated:

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision pursuant to Welfare and Institutions Code section 4712.5. Both parties are bound by this decision and either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.